

THE HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION NO.11188 of 2004

Between:

K.Sobha W/o K.Rajaiah and 2 others

....Petitioners

AND

Joint Collector, Nizamabad District and 6 others

...Respondents

Counsel for the Petitioners : Sri M.V.S.Suresh Kumar

Counsel for Respondents 1&2 : Government Pleader for Revenue

Counsel for Respondents 3 to 7 : Sri J.Kanakaiah

Dated 28/6/2006

ORDER:

This writ petition is filed seeking a writ of *Mandamus* or any other appropriate writ to declare the order in case No.D2/13/2003, dated 6.5.2004 passed by the first respondent-Joint Collector, Nizamabad District as illegal, arbitrary and opposed to principles of natural justice.

The first petitioner claims to have purchased Ac.0-30 guntas in Sy.No.209, second petitioner claims to have purchased Ac.0-28 guntas in Sy.No.211 and the third petitioner claims to have purchased Ac.0-18 guntas in Sy.No.211 and Ac.0-11 guntas in Sy.No.210 of Thamalthota, Nizamabad under registered sale deeds dated 30.03.1995 from their predecessors-in-title, respondents 5 and 6 herein and that they have been in possession and enjoyment of the same. According to them, one Raja Reddy was the original owner of the above said land and he sold the same to Bobbili Chinniah, who is the father of respondents 5 and 6 under unregistered sale deed dated 05.07.1964 and the said transaction was regularized by the second respondent-Mandal Revenue Officer, Nizamabad (M.R.O) by proceedings No.94/ROR/1989, dated 04.04.1991 and subsequently, the names of respondents 5 and 6 were also mutated in the revenue records based on which pattadar passbooks were also issued to them. The petitioners complain that the respondents 3 and 4 filed O.S.22 of 1996 and O.S.110 of 1996 on the file of Senior Civil Judge, Nizamabad against the petitioners and others for declaration of title in

respect of Ac.0-18 guntas in Sy.No.209 and Ac.0-10 guntas in Sy.No.211 falsely claiming that they are the owners of the said land having purchased the same from the legal heirs of Bobbili Narsaiah and Bobbili Shankar, who are brothers of Bobbili Chinnaiah. While the suits were pending trial, the respondents 3 and 4 herein filed revision petition No.D2/13/2003 before the first respondent-Joint Collector questioning regularization proceedings dated 04.04.1991 of the second respondent-M.R.O., without impleading the petitioners and thereafter, the first respondent by order dated 06.05.2004, set aside the order of mutation dated 04.04.1991 passed by the second respondent, on the ground that the civil suits are pending for declaration of title and perpetual injunction. Questioning the legality of the said orders dated 06.05.2004 passed by the first respondent, the petitioners filed the present writ petition.

The respondents 3 and 4 filed a counter contending that the land originally belong to Raja Reddy, who sold the same to Bobbili Chinnaiah and his two brothers Bobbili Narsaiah and Bobbili Shankar and the three brothers divided the same among themselves and were in separate possession of their respective $\frac{1}{3}^{\text{rd}}$ share and after their death, the respondents 3 and 4 herein purchased Ac.0-30 guntas in Sy.No.209 and Ac.0-12 guntas in Sy.No.211 from the heirs of Bobbili Narsaiah under registered sale deeds in 1985 and 1986 and they have been in possession and enjoyment of the same. They further contend that the alleged mutation effected by the M.R.O., in favour of respondents 5 to 7 in the year 1991 is collusive and illegal and was without notice to respondents 3 and 4, in spite of their applications for mutation in their favour being pending. Respondents 3 and 4 contend that as respondents 5 to 7 started claiming ownership under the guise

of illegal orders of mutation passed by the M.R.O in 1991, they filed suits in O.S.No.22 of 1996 and O.S.110 of 1996 for declaration of title and injunction. According to them, they filed a revision before the first respondent questioning the legality of the orders of the second respondent and after hearing respondents 5 to 7, the first respondent set aside the orders of second respondent, in view of the pendency of the suits before the civil Court and directed the second respondent-M.R.O to incorporate the name of the original pattadar in the revenue records and therefore the said orders of the first respondent are not liable to be quashed.

It is not disputed that one Raja Reddy was the original owner of the subject land situate in Sy.Nos.209 to 211 of Thamalthota, Nizamabad. According to the petitioners, Raja Reddy sold the land to Bobbili Chinnaiah who is father of respondents 5 and 6 under unregistered sale deed dated 05.07.1964, which transaction was subsequently regularized by the second respondent-M.R.O on 04.04.1991 and the petitioners claim to have purchased the land from respondents 5 and 6 under registered sale deeds dated 30.03.1995. On the other hand, respondents 3 and 4 contend that the land was purchased by Bobbili Chinnaiah and his two brothers Bobbili Narsaiah and Bobbili Shankar from the original owner Raja Reddy and the three brothers effected partition among themselves and were in separate possession and enjoyment of their respective $1/3^{\text{rd}}$ shares and subsequent to their death, respondents 3 and 4 purchased an extent of Ac.0-30 guntas in Sy.No.209, Ac.0-12 guntas in Sy.No.211 from the heirs of Bobbili Narsaiah in 1985 and 1986 under registered sale deeds and that they have been in possession and enjoyment of the said extents. Thus, the petitioners and their vendors, respondents 5

and 6, on one hand and the respondents 3 and 4 on the other, have been putting forward rival claims of ownership over the same land. Admittedly, the two suits in O.S.No.22 of 1996 and O.S.No.110 of 1996 filed by the respondents 3 and 4 for declaration of title and injunction in respect of Ac.0-18 guntas in Sy.No.209 and Ac.0-10 guntas in Sy.No.211 are pending trial before the Senior Civil Judge, Nizamabad. It cannot be disputed that the question of title has to be necessarily decided in those suits pending before the civil Court.

The only question, which arises for consideration in this proceeding is whether the impugned orders dated 06.05.2004 passed by the first respondent setting aside the orders of mutation dated 04.04.1991 passed by the second respondent are liable to be set aside?

The learned counsel for the petitioners contended that the regularization of the transaction of purchase by Bobbili Chinnaiah from Raja Reddy and the mutation in favour of respondents 5 and 6, who are the sons of Bobbili Chinnaiah was effected by orders dated 04.04.1991 and about 12 years thereafter, the respondents 3 and 4 approached the first respondent-Joint Collector, by way of a revision, without impleading the petitioners as parties thereto and the first respondent, without giving any notice to the petitioners, who are interested in the subject matter in dispute has chosen to set aside the orders of mutation of the second respondent and hence the said orders of the first respondent are vitiated. It is not disputed that by the time respondents 3 and 4 filed the revision before the first respondent in 2003, the two suits filed by them against the petitioners and respondents 5 to 7 were pending before the civil Court. The respondents 3 and 4 had therefore, full knowledge of the claim of

ownership put forward by the petitioners and their predecessors, respondents 5 and 6. In spite of it, the respondents 3 and 4 have not chosen to implead the petitioners as parties to the revision petition. When the respondents 3 and 4 filed the suits based on cause of action, which is said to have arisen because of the claim of ownership put forward by the petitioners and have impleaded the petitioners also as defendants in those suits, there is absolutely no reason or justification for not impleading them in the revision petition, which was filed before the first respondent long subsequent to the filing of the suits. It is obvious that respondents 3 and 4 made efforts to create evidence behind the back of the petitioners and make use of such evidence to their benefit in the pending civil suits.

Section 9 of The A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for brevity, 'the Act') enables the Collector *suo motu* or on an application made to him, call for and examine the record of any Recording Authority including Mandal Revenue Officer and revise the same. The proviso to Section 9 of the Act, however, mandates that no such order adversely affecting any person shall be passed under this section unless he had an opportunity of making a representation.

Relying upon the above proviso, learned counsel for the petitioners strenuously contends that the impugned order dated 06.05.2004 of the first respondent is vitiated for the simple reason that respondents 3 and 4 failed to implead the petitioners as parties to the revision and the first respondent also did not issue any notice to them. Even assuming that the respondents 3 and 4 purposefully avoided impleading of petitioners to the revision, there is absolutely no justification for the first respondent for not issuing any notice to the petitioners though he was apprised of the rival claims of ownership

put forward by the petitioners and also of the pendency of the suits between the parties. The impugned order of the first respondent makes a reference to the same and purports to set aside the orders of the second respondent-M.R.O., in view of the pendency of the suits for declaration of title. The impugned order dated 06.05.2004 of the first respondent is therefore in clear violation of the proviso to Section 9 of the Act and also Rule 23 of 'The Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989 (for short 'the Rules')'. Sub-rule (3) of Rule 23 of the Rules also mandates that the Collector may pass orders after giving sufficient opportunity to the party or parties likely to be adversely affected to make written or oral representation before issue of orders. Sub-rule (4) of Rule 23 mandates that the orders under revision shall be final and there shall be no further review by the Collector. When the orders under revision are accorded finality under Sub-rule (4) of the Rules, it is mandatory for issuing a notice and sufficient opportunity of representation to the parties likely to be adversely affected by such orders, apart from the fact that the principles of natural justice also require that such an opportunity of hearing be given to the persons interested in the property.

The learned counsel for the respondents 3 and 4 contend that in the impugned orders, the first respondent merely directed that the name of the original owner Raja Reddy be entered in the records pending disposal of the civil suits and it does not therefore, cause any prejudice to the petitioners. The said contention cannot be accepted for the reason that the first respondent has set aside the orders of mutation existing in the revenue records for a long period of over 12 years without issuing any notice to the petitioners, who are the persons interested in the subject matter of dispute and the same being in clear

contravention of the mandatory provision contained in the proviso to Section 9 of the Act and Rule 23 of the Rules. The proper course would have been to leave the parties to settle the dispute regarding title in the pending civil suit without disturbing the entries in the revenue records, which were existing for over 12 years.

The learned counsel for the respondents 3 and 4 next contended that even the original proceedings of mutation ordered by the second respondent were without notice to respondents 3 and 4 and if the impugned orders of the first respondent are set aside, it amounts to restoring another irregular order of the second respondent-M.R.O. The said contention, though appears attractive at the first blush, lacks conviction for the reason that the proceedings of the M.R.O regularizing the transaction of purchase by Bobbili Chinnaiah, father of respondents 5 and 6, and mutation in favour of respondents 5 and 6 was passed as long back as on 04.04.1991 and the same was never questioned by respondents 3 and 4 and the entries were allowed to remain in the revenue records for more than 12 years unchallenged. It is to be noted that the purchase of the land by the petitioners was in 1995 and the suits were filed by respondents 3 and 4 in 1996. But, the revision before the first respondent was filed about 7 years thereafter in 2003. Thus, the respondents 3 and 4 did not take any immediate steps to question the proceedings of the Mandal Revenue Officer even after the purchase of the land by the petitioners in 1995, but waited for seven more years to file the revision before the first respondent when the trial of the suits was to be taken up.

The learned counsel for the respondents 3 and 4 next contended that there is no limitation prescribed under the Act for filing a revision and therefore, the revision was maintainable. No doubt, the Act does

not prescribe any period of limitation for filing the revision. But, at the same time, it cannot be said that the party is free to move the revisional authority at any time that suits his convenience and seek to disturb the entries in the revenue records existing for over a long period. The learned counsel for the petitioners contended that in the absence of any specific period of limitation prescribed, the parties are required to approach the concerned authorities within a reasonable time and not at their sweet will and pleasure. In support of the said contention, he relied upon a decision in **State of Gujarat v. P.Raghav**^[1], wherein the Apex Court held that:

“The question arises whether the Commissioner can revise an order made under Section 65 at any time. It is true that there is no period of limitation prescribed under Section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised”.

In the present case, the orders passed by the M.R.O., in 1991 were sought to be revised in 2004. The respondents 3 and 4 had knowledge of the claim of ownership put forward by the petitioners at least by 1996 when they filed the suits, but they filed the revision before the first respondent seven years thereafter in 2003, that too, without impleading the petitioners, knowing fully about the claim of ownership raised by them. Thus, more than a question of limitation, the conduct of the respondents 3 and 4 in filing the revision before the first respondent after such a long interval of seven years after their knowledge and that too, without impleading the petitioners and during the pendency of the suits clearly shows lack of *bona fides*. As already stated, the revisional authority-the first respondent also failed to comply with the mandatory requirement of providing an opportunity of

representation to the petitioners, who were the persons interested in the subject matter of dispute.

In the above circumstances and for the reasons mentioned supra, it is held that the impugned orders dated 06.05.2004 of the first respondent are vitiated and hence are liable to be set aside and they are accordingly set aside.

In the result, the writ petition is allowed. No order as to costs.

G.V.SEETHAPATHY, J

28.06.2006

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THE HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

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DATED: 28.06.2006

[\[1\]](#) AIR 1969 SUPREME COURT 1297